HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLOTTE WINELAND, Individually, and SUSAN WINELAND, as Personal Representative of the Estate of JOHN DALE WINELAND, Deceased, Plaintiffs, v. AIR & LIQUID SYSTEMS CORPORATION, et al. Defendants.	Case No. 2:19-cv-00793-RSL DEFENDANT CRANE CO.'S MOTION FOR SUMMARY JUDGMENT **NOTED FOR HEARING: September 11, 2020** **ORAL ARGUMENT REQUESTED**

I. INTRODUCTION AND RELIEF REQUESTED

Crane Co. respectfully requests that this Court dismiss all of Plaintiffs' claims against it for at least two reasons. First, Plaintiffs have set forth no evidence or testimony indicating that Mr. Wineland worked with or around Crane Co. products at any time, including in a manner that exposed him to asbestos. Accordingly, they cannot satisfy their burden to show that asbestos exposure resulting from Crane Co. products was a substantial factor in the development of Mr. Wineland's alleged disease. Second, even if Plaintiffs were able to identify any evidence that Mr. Wineland worked with or around Crane Co. products (which they have not), Plaintiffs further could not demonstrate that such products contained asbestos-containing original component parts for which Crane Co. is responsible. Plaintiffs' claims should be dismissed with prejudice.

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II. STATEMENT OF FACTS

Plaintiffs brought claims in this lawsuit against approximately 26 defendants, including Crane Co., alleging that defendants manufactured, supplied, or were otherwise responsible for asbestos-containing products that caused Mr. Wineland to develop mesothelioma. *See* Dkt. 53. Crane Co. is a manufacturer of industrial equipment. Plaintiffs allege that during his time in the Navy, Mr. Wineland operated and maintained equipment that Crane Co. and other manufacturers designed to work with asbestos-containing component parts and insulation. *Id.* at ¶¶ 3.1-3.4.

Mr. Wineland did not give a deposition prior to his passing. Declaration of G. William Shaw, filed herewith, ¶2. No fact witness has provided any testimony regarding Mr. Wineland's alleged work with Crane Co. equipment. *Id.*

Plaintiffs originally filed this case on May 24, 2019. *See* Dkt. 1. Crane Co. previously withdrew its fully briefed Motion for Summary Judgment to allow additional time for discovery following the passing of one of Plaintiffs' experts. *See* Dkt. 94, 95, 145, 169. Discovery closed on August 10, 2020. Dkt. 281.

III. AUTHORITY

1. Summary Judgment Standard

Under Fed. R. Civ. P. 56(a), summary judgment is proper where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. If a defendant has met this burden, the burden shifts to the plaintiff. *Celotex v. Catrett*, 477 U.S. 317, 322 (1986). If the plaintiff "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," then the trial court should grant the motion. *Id.* A mere "scintilla" of evidence is insufficient to avoid summary judgment; rather, "there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). A plaintiff may not rely on mere conclusory allegations unsupported by factual data to establish the existence of a factual dispute. *Hansen v. U.S.*, 7 F.3d 137, 138 (9th Cir. 1993).

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2. Plaintiffs cannot establish that Mr. Wineland was exposed to respirable asbestos from a product manufactured, sold, or specified for use by Crane Co.

Whether the Court applies maritime or Washington law, Plaintiffs cannot meet their burden of proof. Under maritime law, plaintiffs must demonstrate that exposure to a particular product was a substantial contributing factor to the plaintiff's injury. *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1174-1176 (9th Cir. 2016); *Lindstrom v. A-C Product Liab. Trust*, 424 F.3d 488, 492 (6th Cir. 2005), *overruled on other grounds by Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986 (2019). To satisfy this burden, the plaintiff must provide evidence "that the injured person had substantial exposure to the relevant asbestos for a substantial period of time." *McIndoe*, 817 F.3d at 1176.

Under Washington law, a plaintiff must furnish sufficient evidence to support an inference that the product was a substantial factor in causing the injury. *See, e.g.*, *Lockwood v. AC&S, Inc.*, 109 Wn.2d 235, 245-248, 744 P.2d 605 (1987). Washington courts consider a number of factors to determine whether a sufficient causal connection exists between the alleged injury and an asbestos-containing product. These factors include the plaintiff's proximity to the product; the expanse of the worksite where the asbestos fibers were released; the amount of time the plaintiff was exposed; the types of products to which plaintiff was exposed; the amount of asbestos contained in the product; the tendency of the product to release asbestos fiber; and the manner in which the products were handled. *Lockwood*, 109 Wn.2d at 248-49.

Here, there is no evidence or testimony that Mr. Wineland worked with or around Crane Co. products. Accordingly, Plaintiffs have not and cannot provide sufficient evidence to demonstrate that asbestos exposure from any product associated with Crane Co. was a substantial factor in the development of Mr. Wineland's alleged disease.

Moreover, as several recent Western District of Washington cases involving allegations of asbestos exposure reflect, even if Plaintiffs were able to show that Mr. Wineland at some point worked at a location where a Crane Co. product was present, such evidence, in and of itself, would

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still be insufficient to defeat summary judgment. In *Yaw v. Air & Liquid Systems Corp.*, 2019 WL 3531232, at *2 (W.D. Wash., Sept. 25, 2019), the plaintiff identified particular ships on which he worked, including in dusty engine and boiler rooms. The court nonetheless granted summary judgment to the defendant equipment manufacturers, holding that plaintiff had "fail[ed] to identify a specific time that [plaintiff] was on a particular ship and exposed to a particular product that had produced or was producing asbestos dust." *Id.* at *4. The court further noted that establishing the mere presence of a defendant's products in the workplace is "insufficient." *Id.*

In another recent case, plaintiff alleged that the decedent worked around pumps that were covered with asbestos insulation. *Klopman-Baerselman v. Air & Liquid Systems Corporation*, 2019 WL 5064765, at *2 (W.D. Wash., Oct. 9, 2019). Plaintiff further presented evidence that defendant supplied a pump to one of the ships where the decedent worked. *Id.* at *1. The court, however, held that plaintiff's evidence was insufficient to show a reasonable connection between the decedent's injuries and the defendant's products, noting that plaintiff did not offer "testimony of witnesses with personal knowledge of decedent using or otherwise being exposed to an asbestos-containing product for which [defendant] is responsible." *Id.* at *4. Likewise, in *Deem v. Air & Liquid Systems Corporation*, 2019 WL 6251040, at *3 (W.D. Wash., Nov. 22, 2019), one of the decedent's former co-workers testified that he worked on the defendant's products, and the decedent would have as well, because "[t]hat was part of our trade." Despite this testimony, the co-worker could not recall any particular brand of equipment that he and the decedent worked on together. *Id.* The court held that plaintiff's evidence was insufficient to defeat summary judgment. *Id.* at *5.

Just last week, Judge Deborah K. Chasanow of the District Court of Maryland dismissed all claims against Crane Co. under similar facts to those presented here. In *Hailey v. Air & Liquid Systems Corp., et. al.*, 2020 WL 4732141 (D. Md., Aug. 14, 2020), the plaintiff provided evidence that the decedent worked primarily in the aft engine room on the USS Henderson. *Id.* at *1. One of decedent's co-workers described work that he and the decedent performed on valves and

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testified that Crane Co. valves "sounded familiar." *Id.* at 8. Plaintiff's naval expert likewise testified that there were Crane Co. valves on the ship, including, "more likely than not," in the aft engine room. *Id.* The court held that plaintiff's evidence was insufficient to create a genuine issue of material fact under maritime law or Maryland's substantial factor test, as "[c]ourts applying each of these standards have stressed the importance of understanding the physical dimensions of the workplace where a decedent worked. In other words, whether the court is looking for proof of 'regular, frequent exposure' or 'substantial exposure,' evidence of *actual* exposure to [a] Defendant's specific products is a baseline requirement – and one that cannot be met merely by proving that the defendant's products were present at a decedent's workplace." *Id.* at 5 (emphasis in original).

The court's analysis as to Crane Co. applies equally to this matter:

> Plaintiffs' case for establishing substantial factor causation turns on a chain of uncertainties. It is uncertain whether Crane valves were ever present in the aft engine room. It is uncertain whether any Crane valves initially present in that engine room were subsequently replaced. It is uncertain whether – even if present – any Crane valves required any work at all. It is uncertain whether any Crane valves, if present and if requiring work, were actually worked on by [decedent] and not someone else. And it is uncertain whether – if present and if requiring work, and if [decedent] did that work – [decedent] actually did such work regularly or frequently enough for specifically Crane valves to have been a substantial factor in causing [decedent's] mesothelioma.

Id. at 9.

Conversely, in *Mikelsen v. Air & Liquid Systems Corporation*, 2018 WL 4896247, at *4, n.6, (W.D. Wash., Oct. 10, 2018), this Court denied a defendant manufacturer's motion for summary judgment, noting that "[p]laintiffs have provided evidence specific to [defendant], including the types of products sold, the volume of product in the workplace, the way asbestos-containing materials were handled, the workplace environment, [plaintiff's] proximity to work that generates asbestos dust, dispersal rates, and the length of time [plaintiff] worked around [defendant's products]." Here, however, there is no evidence or testimony that Mr. Wineland

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worked with or around Crane Co. products, let alone that such work exposed him to asbestos. Plaintiffs cannot meet their burden.

3. Crane Co. had no duty to warn about products it did not manufacture, supply, or sell.

The Washington Supreme Court has held that equipment manufacturers may not be held liable, under negligence or strict products liability, for failing to warn of the defects and dangers posed by a product that they did not manufacture, sell, or otherwise place into the stream of commerce. *Braaten v. Saberhagen Holdings, Inc.*, 165 Wn.2d 373, 396-97, 198 P.3d 493 (2008) (equipment manufacturer is entitled to summary judgment where plaintiff fails to present admissible evidence that he was actually exposed to original asbestos-containing gaskets or packing); *Simonetta v. Viad Corp.*, 165 Wn.2d 341, 353-54, 362-63, 197 P.3d 127 (2008) (same as to external insulation); *see also Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986 (under maritime law, manufacturer owes a duty to warn for third-party component parts only when (1) its product requires incorporation of a part, (2) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (3) the manufacturer had no reason to believe the user would realize the hazard). To the extent Plaintiffs' theory as to Crane Co. rests on exposure that Mr. Wineland may have had to asbestos-containing products made, sold, or installed by others, but somehow encountered by Mr. Wineland while he was in proximity to Crane Co. products, their claim(s) should be dismissed.

At issue in the *Simonetta* case was an evaporator that was installed on a Navy vessel, the USS SAUFLEY, in the early 1940s. *Id.* at 346. After it was installed, and pursuant to Navy requirements, the evaporator was insulated with asbestos-containing insulation that was manufactured, sold, and installed by other companies. *Id.* Since the maker of the evaporator had not manufactured, sold, or specified the use of the insulation or otherwise placed it in the stream of commerce, the Court held that it could not be held liable under theories of negligence or products liability. *Id.* at 362-63.

The defendants in *Braaten* were valve and pump manufacturers whose equipment was also

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installed aboard Navy vessels. *Braaten*, 165 Wn.2d at 379. As was the case with the evaporator in *Simonetta*, the pumps and valves at issue in *Braaten* also sometimes received asbestos-containing insulation pursuant to Navy requirements, and Mr. Braaten claimed exposure to such insulation. *Id.* at 381. As it did in *Simonetta*, the court determined the valve and pump manufacturers were not liable to Mr. Braaten absent proof that they had manufactured or sold the insulation or otherwise placed it into the stream of commerce. *Id.* at 396-97.

In addition, the Court in *Braaten* also addressed the equipment manufacturers' liability with respect to replacement packing and gaskets. *Id.* at 391. Although Mr. Braaten claimed exposure to packing and gasket inside the defendants' equipment, the evidence was insufficient to show that he had worked with the original packing and gaskets supplied by the defendants, as opposed to replacement packing and gaskets that were manufactured and supplied by others. *Id.* at 396-97. Absent proof that the packing and gaskets to which Mr. Braaten was exposed were manufactured or sold by the defendant equipment manufacturers, or that the equipment manufacturers had specified or required the use of said material,[1] there was an insufficient connection by which to impose liability upon them under principles of negligence or strict products liability. *Id.*

Plaintiffs have no evidence that Mr. Wineland ever worked on or around Crane Co. products, let alone that such products contained component parts for which Crane Co. is responsible. Without such evidence, Plaintiffs cannot establish that Mr. Wineland was exposed to asbestos-containing materials for which Crane Co. is responsible. Accordingly, Plaintiffs' claims should be dismissed with prejudice.

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[1] The *Braaten* court specifically found that Crane Co. valves could be used with both asbestos-containing and non-asbestos-containing parts, and thus did not require the use of asbestos-containing materials. *See id.*; *see also O'Neil v. Crane Co.*, 266 P.3d 987, 992 (Cal. 2012) (holding that, while Navy specifications, at times, mandated the use of asbestos-containing gasket materials, Crane Co. valves did not require such materials to operate, and it was entirely the decision of the Navy to use such materials with its shipboard equipment). Accordingly, even if this Court were to determine the "required use" test for legal responsibility applied in *DeVries* applicable here, summary judgment would be warranted pursuant to the conclusion of the Washington Supreme Court.

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IV. CONCLUSION

For the foregoing reasons, Crane Co. respectfully requests that the Court dismiss Plaintiffs' claims against it with prejudice.

DATED this 20th day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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And I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

SIGNED at Seattle, Washington, this 20th day of August, 2020.

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